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guidelines to facilitate the provisions of due process, the uniformity of penalties imposed to its licensees and to ensure that its disciplinary policies are known. These guidelines are for use by administrative law judges, attorneys and licensees involved in settlement of disciplinary actions.

While recognizing the concept that administrative law judges must be free to exercise their discretion in such matters, the Bureau desires that these guidelines be followed to the extent possible and that any departure from them be noted and explained in the proposed Decision.

The Bureau acknowledges that there may be cause for departure from the guidelines in individual matters dependent upon mitigating or aggravating circumstances. The Bureau requests that any deviations or omissions be fully considered and noted in the proposed Decision. Of primary importance is the effect the licensee's conduct had or can have on consumers.

Pursuant to Section 7403 of the Business and Professions Code, the Bureau requests that reasonable costs of investigation and adjudication be ordered by the administrative law judge in any case involving revocation, suspension, probation or denial of a license.

The following pages list standard and optional terms and conditions for probation or suspension orders, and recommended penalties.

DESCRIPTION OF PENALTIES

REVOCATION—

This action revokes a respondent's license(s) and prohibits respondent from conducting services in the practice for which discipline is imposed. Prior to the effective date of the Decision, respondent may request reconsideration or reduction of the penalty. If the Department of Consumer Affairs denies the request or does not grant a reduction of the penalty, the earliest date respondent may petition the Bureau of Barbering and Cosmetology for reinstatement of the revoked license is one year from the effective date of the Decision.

PROBATION

This action, usually taken in conjunction with a stayed revocation or suspension, places a licensee on probation to the Bureau of Barbering and Cosmetology for a period of one to five years. During the probationary period, respondent must comply with specific terms and conditions of probation. If the respondent does not comply with all the terms and conditions of probation, the Bureau of Barbering and Cosmetology may pursue additional disciplinary action against the respondent which can result in suspension or revocation of respondent's license(s).

SUSPENSION

This action prohibits a licensee from conducting services in the practice for which they have been disciplined for a specific period of time. The licensee must cease operating during the suspension period. License suspensions can be from five to forty-five working days. During the period of suspension, respondent is required to post a notice which describes the nature of the violation for which respondent is being disciplined.

FULL COST RECOVERY

Section 7403 of the Business and Professions Code allows the Bureau of Barbering and Cosmetology to recover its costs of investigating and adjudicating a disciplinary case. Full cost recovery includes both Division of Investigation and Attorney General costs. A payment schedule can be specified, if warranted.

DESCRIPTION OF PENALTIES (continued)

PARTIAL COST RECOVERY

Section 7403 of the Business and Professions Code allows the Bureau of Barbering and Cosmetology to recover its costs of investigating and adjudicating a disciplinary case. Partial cost recovery in this instance includes Division of Investigation costs only. A payment schedule can be specified, if warranted.

PUBLIC NOTICE

Any disciplinary action imposed as a result of a Decision may be published in the appropriate Bureau of Barbering and Cosmetology newsletter or other publication. Additionally, the Bureau of Barbering and Cosmetology or its designee may issue press releases or other public notices of disciplinary action taken by the Bureau of Barbering and Cosmetology.

EXAMINATIONS

This action requires the respondent to take and pass an examination administered by the examination staff of the Bureau of Barbering and Cosmetology. Respondent shall pay all costs associated with the examination.

STAY OF ORDER

This action allows the Bureau of Barbering and Cosmetology to adopt an order of revocation or suspension but allows the order to be put aside. This means a respondent has time to serve a lesser penalty which normally includes probation. However, if the respondent fails to comply with the terms outlined in the final Decision, the Bureau of Barbering and Cosmetology or its designee can pursue additional disciplinary action against the respondent and reinstate the order that was stayed.

FACTORS TO BE CONSIDERED WHEN DETERMINING PENALTIES

In determining whether revocation, suspension, probation or any combination of these penalties is to be imposed in any given case, the following factors should be considered:

- 1. Nature and severity of the act(s), offense(s) or crime(s) under consideration.
- 2. Actual or potential harm to the consumer.
- Prior disciplinary record.
- 4. Number and/or variety of current violations.
- 5. Mitigation evidence.
- 6. Rehabilitation evidence.
- 7. In the case of a criminal conviction, compliance with the terms of the sentence and/or court-ordered probation.
- 8. The amount of time that has passed since the act(s) or offense(s) occurred.

STANDARD TERMS AND CONDITIONS FOR PROBATION AND/OR SUSPENSION ORDERS

The following standard terms and conditions shall always be included in any Decision issued by the Bureau of Barbering and Cosmetology when the Order includes suspension or probation.

1. Publication of Disciplinary Action

Any disciplinary action imposed as a result of this Decision may be published in the appropriate Bureau of Barbering and Cosmetology newsletter or other publication. Additionally, the Bureau of Barbering and Cosmetology or its designee may issue press releases or other public notices of disciplinary action taken by the Bureau of Barbering and Cosmetology.

2. Personal Appearances

Upon written notification, respondent may be required to appear in person before the Bureau of Barbering and Cosmetology or its designee at any time during the period of suspension or probation.

3. Obey All Laws

Respondent shall obey all federal, state and local laws and all rules and regulations governing any practice for which the respondent is licensed.

4. Posting of Sign (Suspension)

During the period of suspension, respondent shall post a notice which describes the nature of the violation for which the license is being disciplined. If only an individual operator's license is disciplined, the notice shall be conspicuously posted in the establishment where the respondent performs barbering or cosmetology services. If an establishment license is disciplined, the notice shall be conspicuously posted on the outside of the establishment visible to the public. The sign to be posted will be provided by the Bureau of Barbering and Cosmetology's designee prior to the effective date of the suspension and will include the respondent's name and license number(s).

5. Quarterly Reports of Compliance

Respondent shall submit Quarterly Reports of Compliance to the Bureau of Barbering and Cosmetology's designee in accordance with a specified schedule. The form, "Quarterly Report of Compliance" (Revised 7/97), which is provided by the Bureau of Barbering and Cosmetology's Enforcement Division, must be completed and signed under penalty of perjury regarding compliance with all terms and conditions of probation.

STANDARD TERMS AND CONDITIONS (continued)

6. Tolling of Suspension/ Probation

Respondent shall immediately notify the Bureau of Barbering and Cosmetology's designee of any and all address changes. If respondent should travel outside California for a period greater than sixty (60) days, respondent must notify the Bureau of Barbering and Cosmetology's designee, in writing, of the dates of departure and return. Periods of residence outside the State of California will not apply to the tolling of this suspension and/or probationary period.

7. Violation of Probation

If respondent violates probation or suspension in any respect, the Bureau of Barbering and Cosmetology, after giving respondent notice and the opportunity to be heard, may revoke suspension or probation and reinstate the order that was stayed. If a Petition to Revoke Probation is filed against respondent during suspension and/or probation, the Bureau of Barbering and Cosmetology shall have continuing jurisdiction until the matter is final.

8. Completion of Suspension/ Probation

Upon successful completion of suspension and/or probation, respondent's license(s) will be fully restored.

9. Notification to Employer

Respondent shall be required to inform his/her employer and any subsequent employer during the probation period of the discipline imposed by this Decision by providing the employer with a copy of the Decision and Order in this matter. The employer will be requested to inform the Bureau of Barbering and Cosmetology, in writing, that he/she is aware of the discipline. This provision applies to independent contractors (booth renters) as well as employees.

10. Participation in Apprenticeship or Externship Bureau

Respondent shall not participate as a trainer or supervisor in an apprenticeship or externship program during the course of this probation. Respondent shall terminate any such program in existence on the effective date of this Decision.

11. Change of Employment

Respondent will notify the Bureau of Barbering and Cosmetology in writing of any and all changes in employment location and address within 30 days of such change.

OPTIONAL TERMS AND CONDITIONS FOR PROBATION AND/OR SUSPENSION ORDERS

The following optional terms and conditions are variables that may be included in a Decision issued by the Bureau of Barbering and Cosmetology depending on the nature and circumstances of a specific case.

1. Written Licensing Examination

If respondent fails to pass the examination within 180 days, the respondent shall cease practice until respondent takes and successfully passes examination, has submitted proof of same to the Bureau, and has been notified by the Bureau that he/she may resume practice. The examination will be administered by the examination staff of the Bureau of Barbering and Cosmetology. Respondent shall pay the established examination fee and any other costs associated with taking the examination.

2. Practical Licensing Examination

If respondent fails to pass the examination within 180 days, the respondent shall cease practice until respondent takes and successfully passes examination, has submitted proof of same to the Bureau, and has been notified by the Bureau that he/she may resume practice. The examination will be administered by the examination staff of the Bureau of Barbering and Cosmetology. Respondent shall pay the established examination fee and any other costs associated with taking the examination.

3. Restitution

Respondent shall make restitution to any injured party in the amount of (specify amount). Proof of compliance with this term shall be submitted to the Bureau of Barbering and Cosmetology's designee within (specify time) of the effective date of the Decision. The name and address of the injured party may be inserted in the body of this condition. The amount and time period in which to comply shall be based upon the facts of the case.

4. Criminal Probation

If respondent is on criminal probation for the acts upon which disciplinary action is based, respondent shall submit reports from the criminal court probation officer regarding respondent's progress during criminal probation. Reports shall be filed quarterly and continue until respondent is no longer on criminal probation or the Bureau of Barbering and Cosmetology's probation is terminated, whichever occurs first.

OPTIONAL TERMS AND CONDITIONS (continued)

5. Proof of Advertising Correction

If the advertising violation that led to the disciplinary action has not been corrected, respondent shall not practice until proof of correction has been submitted to the Bureau of Barbering and Cosmetology or its designee.

6. Remedial Education Courses

Respondent shall complete a remedial education course(s) directly relevant to the violation as specified by the Bureau of Barbering and Cosmetology. The education course(s) shall be completed in a Bureau of Barbering and Cosmetology approved school within a time frame designated by the Bureau of Barbering and Cosmetology; the time frame shall be incorporated as a condition of this probation. Respondent shall provide proof of attendance and satisfactory completion of the course(s). Failure to satisfactorily complete the required course(s) as scheduled shall constitute a violation of probation. Respondent is responsible for all costs of such remedial education.

7. Notice to Employees

A respondent who is an establishment owner shall, upon or before the effective date of this Decision, post or circulate a notice to all employees working in the establishment which accurately recites the terms and conditions of this Decision. Respondent shall be responsible for said notice being immediately available to employees. "Employees" as used in this provision includes all full-time, part-time, temporary and independent contractors employed or hired at any time during probation.

GROUNDS FOR DISCIPLINARY ACTION AND RECOMMENDED PENALTIES

7404(a) UNPROFESSIONAL CONDUCT

Recommended Penalty

Maximum: Revocation/denial of license, full cost recovery

Minimum: Revocation stayed, 3 years probation, 5 working days suspension, partial cost recovery.

1. Standard Terms of Probation: Nos. 1-11

2. Optional Terms of Probation:

- 1. Written Licensing Exam
- 4. Criminal Probation
- 6. Remedial Education
- 7. Notice to Employees (If Respondent is Establishment Owner)

7404(a)(1)

INCOMPETENCE OR GROSS NEGLIGENCE, INCLUDING FAILURE TO COMPLY WITH GENERALLY ACCEPTED STANDARDS FOR THE PRACTICE OF BARBERING, COSMETOLOGY OR ELECTROLOGY, OR DISREGARD FOR THE HEALTH AND SAFETY OF PATRONS.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 3 years probation, 5 working days suspension, partial cost recovery.

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 1. Written Licensing Exam
 - 3. Restitution
 - 6. Remedial Education
 - 7. Notice to Employees (If Respondent is Establishment Owner)

GROUNDS FOR DISCIPLINARY ACTION

7404(a)(2)

REPEATED SIMILAR NEGLIGENT ACTS

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 10 working days suspension, 2 years probation, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 2. Practical Licensing Exam
 - 6. Remedial Education
 - 7. Notice to Employees (If Respondent is Establishment Owner)

7404(a)(3)

CONVICTION OF ANY CRIME SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS, OR DUTIES OF THE LICENSE HOLDER, IN WHICH CASE, THE RECORDS OF CONVICTION OR A CERTIFIED COPY SHALL BE CONCLUSIVE EVIDENCE THEREOF.

Recommended Penalty

Conviction of a felony involving a crime of violence (including, but not limited to: murder, attempted murder, assault with a deadly weapon) or prostitution (soliciting) within the past three years or is currently on parole or probation for such a conviction.

Maximum: Revocation/denial of license; full cost recovery

Minimum: Revocation stayed/license issued with terms and conditions appropriate to crime; 5 years probation; partial cost recovery

Conviction of three or more felonies involving crimes of violence (including, but not limited to: murder, attempted murder, assault with a deadly weapon) or prostitution (soliciting) within the past five years (or six in a ten year period).

Maximum: Revocation/denial of license; full cost recovery

Minimum: Revocation stayed/license issued with terms and conditions appropriate to crimes; 5 years probation; partial cost recovery

Conviction of a crime of a sexual nature (other than those involving a minor) within the past three years or is currently on parole or probation (including, but not limited to: rape, sexual assault, molestation).

GROUNDS FOR DISCIPLINARY ACTION

7404(a)(3)

Maximum: Revocation/denial of license; full cost recovery

Recommended
Penalty (continued)

Minimum: Revocation stayed/license issued with terms and conditions appropriate to crime; 5 years probation; partial cost

recovery

Conviction of any crime committed by a licensee in an establishment subject to regulation by the Bureau of Barbering and Cosmetology.

Maximum: Revocation; full cost recovery

Minimum: Revocation stayed; 5 years probation with terms and conditions appropriate to crime; partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:

4. Criminal Probation

7404(a)(4)

ADVERTISING BY MEANS OF KNOWINGLY FALSE OR DECEPTIVE STATEMENTS.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 5 working days suspension, 1 year probation, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 5. Proof of Advertising Correction

7404(b)

FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 2 years probation, 5 working days suspension, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 1. Written Licensing Exam
 - 7. Notice to Employees (If Respondent is Establishment Owner)

GROUNDS FOR DISCIPLINARY ACTION

7404(c)

FAILURE TO COMPLY WITH THE RULES GOVERNING
HEALTH AND SAFETY ADOPTED BY THE BOARD AND
APPROVED BY THE STATE DEPARTMENT OF HEALTH
SERVICES, FOR THE REGULATION OF ESTABLISHMENTS, OR
ANY PRACTICE LICENSED AND REGULATED BY THIS
CHAPTER.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 2 years probation, 5 working days suspension, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 1. Licensing Exam
 - 7. Notice to Employees (If Respondent is Establishment Owner)

7404(d)

FAILURE TO COMPLY WITH THE RULES ADOPTED BY THE BOARD FOR THE REGULATION OF ESTABLISHMENTS, OR ANY PRACTICE LICENSED AND REGULATED UNDER THIS CHAPTER.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 2 years probation, 5 working days suspension, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 1. Written Licensing Exam
 - 7. Notice to Employees (If Respondent is Establishment Owner)

7404(e)

CONTINUED PRACTICE BY A PERSON KNOWINGLY HAVING AN INFECTIOUS OR CONTAGIOUS DISEASE.

Recommended Penalty

Maximum: License is suspended until respondent provides written proof from a physician stating he/she is no longer contagious/infectious. Upon verification, license is suspended for 30 working days. Include full cost recovery.

Minimum: License is suspended until respondent provides written proof from a physician stating he/she is no longer contagious/infectious. Upon verification, license is placed on 1 year probation. Include partial cost recovery.

1. Standard Terms of Probation: Nos. 1-11

CROUNDS FOR DISCIPLINARY ACTION

7404(f) HABITUAL DRUNKENNESS, HABITUAL USE OF OR

ADDICTION TO THE USE OF ANY CONTROLLED SUBSTANCE.

Recommended Penalty

License is suspended until respondent completes a drug/alcohol rehabilitation program. Upon verification of completion, license is placed on 3 years probation. Include full cost recovery.

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:

4. Criminal Probation

7404(g)

OBTAINING OR ATTEMPTING TO OBTAIN PRACTICE IN ANY OCCUPATION LICENSED AND REGULATED UNDER THIS CHAPTER, OR MONEY, OR COMPENSATION IN ANY FORM, BY FRAUDULENT MISREPRESENTATION.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 2 years probation, 14 working days suspension, partial cost recovery.

If respondent has a pending application on file, the application shall be denied.

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:

4. Criminal Probation

7404(h)

FAILURE TO DISPLAY THE LICENSE OR HEALTH AND SAFETY RULES AND REGULATIONS IN A CONSPICUOUS PLACE.

Recommended Penalty

Maximum: 5 working days suspension, full cost recovery

Minimum: Public letter of reprimand, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:

7. Notice to Employees

GROUNDS FOR DISCIPLINARY ACTION

7404(i)

ENGAGING, OUTSIDE OF A LICENSED ESTABLISHMENT AND FOR COMPENSATION IN ANY FORM WHATEVER, IN ANY PRACTICE FOR WHICH A LICENSE IS REQUIRED UNDER THIS CHAPTER, EXCEPT THAT WHEN SUCH SERVICE IS PROVIDED BECAUSE OF ILLNESS OR OTHER PHYSICAL OR MENTAL INCAPACITATION OF THE RECIPIENT OF THE SERVICE AND WHEN PERFORMED BY A LICENSEE OBTAINED FOR THE PURPOSE FROM A LICENSED ESTABLISHMENT.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 2 years probation, 10 working days suspension, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:

7. Notice to Employees

7404(j)

PERMITTING A LICENSE TO BE USED WHERE THE HOLDER IS NOT PERSONALLY, ACTIVELY AND CONTINUOUSLY ENGAGED IN BUSINESS.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 5 years probation, 15 working days suspension, full cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:

7. Notice to Employees

7404(k)

THE MAKING OF ANY FALSE STATEMENT AS TO A MATERIAL MATTER IN ANY OATH OR AFFIDAVIT, WHICH IS REQUIRED BY THE PROVISIONS OF THIS CHAPTER.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 2 years probation, 5 working days suspension, partial cost recovery

If respondent has a pending application on file, the application shall be denied.

1. Standard Terms of Probation: Nos. 1-11

GROUNDS FOR DISCIPLINARY ACTION

7404(1) REFUSAL TO PERMIT OR INTERFERENCE WITH AN

INSPECTION AUTHORIZED UNDER THIS CHAPTER.

Recommended Penalty Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 2 years probation, 30 working days

suspension, partial cost recovery

1. Standard Terms of Probation: Nos. 1-11

2. Optional Terms of Probation:

7. Notice to Employees

7404(m) ANY ACTION OR CONDUCT WHICH WOULD HAVE

WARRANTED THE DENIAL OF A LICENSE.

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Revocation stayed, 2 years probation, 5 working days

suspension, partial cost recovery

If respondent has a pending application on file, the application shall be

denied-

1. Standard Terms of Probation: Nos. 1-11

2. Optional Terms of Probation:

4. Criminal Probation

7. Notice to Employees

7404(n) FAILURE TO SURRENDER A LICENSE THAT WAS ISSUED IN

ERROR OR BY MISTAKE

Recommended Penalty

Maximum: Revocation, full cost recovery

Minimum: Public letter of reprimand, partial cost recovery

1. Standard Terms of Probation: Nos. 1 - 11

GROUNDS FOR DISCIPLINARY ACTION

7320 PRACTICE OF MEDICINE

Recommended Penalty

Maximum: Revocation; full cost recovery

Minimum: 15 days suspension, 2 years probation, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 1. Written Licensing Exam
 - 3. Restitution
 - 6. Remedial Education
 - 7. Notice to Employees (If Respondent is Establishment Owner)

7320.1 METAL INSTRUMENTS

Recommended Penalty

Maximum: Revocation; full cost recovery

Minimum: 5 days suspension, 2 years probation, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 1. Written Licensing Exam
 - 3. Restitution
 - 6. Remedial Education
 - 7. Notice to Employees (If Respondent is Establishment Owner)

7320.2 HLLEGAL TREATMENT METHODS

Recommended Penalty

Maximum: Revocation; full cost recovery

Minimum: 15 days suspension, 2 years probation, partial cost recovery

- 1. Standard Terms of Probation: Nos. 1-11
- 2. Optional Terms of Probation:
 - 1. Written Licensing Exam
 - 3. Restitution
 - 6. Remedial Education
 - 7. Notice to Employees (If Respondent is Establishment Owner)

GROUNDS FOR DISCIPLINARY ACTION

496 SUBVERSION OF LICENSING EXAMINATION

Recommended Penalty

Maximum: Revocation, suspension, denial, full cost recovery

Minimum: 30 days suspension, 3 years probation, partial cost recovery

1. Standard Terms of Probation: Nos. 1-11

2. Optional Terms of Probation:

- 1. Written Licensing Examination
- 2. Practical Licensing Examination
- 4. Criminal Probation